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Lee Kheng Lian (as representative of the estate of Lee Geok Thye) & Anor v Lee Hai & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO-N-02(NCVC)(A)-1301–09 OF 2020
KAMALUDIN MD SAID, AZIZAH NAWAWI AND RAVINTHRAN JJCA
13 OCTOBER 2022

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Civil Procedure — Jurisdiction — High Court — Whether High Court had jurisdiction to order sale of land under O 31 r 1 of Rules of Court 2012 ('the ROC') only if there existed a 'cause or matter' relating to that land and it was 'necessary or expedient' for the purposes of that cause or matter that such an order was made — Rules of Court 2012, O 31 r 1 — Paragraph 3 of Schedule to the Courts of Judicature Act 1964 ('the CJA') — Definition of 'cause' and 'matter' — s 3 of CJA — Whether court could not be asked to make an order for sale of immovable property under O 31 r 1 ROC simply to fulfill the personal needs of the disputing parties — Whether mere fact that a dispute existed, but which had yet to become a cause or matter, was insufficient to invoke O 31 r 1 of the ROC

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The appellants appealed against an order of the High Court ordering 13 lots of land ('the lands') cultivated with oil palm and rubber trees to be sold by way of private treaty or by auction and the proceeds of the sales to be distributed amongst the appellants and respondents according to their respective shares in the lands. The application for the sale of the lands was made by the first five respondents on the ground that some of the respondents were of advanced age and/or were of ill-health (the first, second and fifth respondents were, respectively, aged 85, 80 and 89 years), that it was difficult and costly to subdivide the lands and that the appellants were unwilling to sell their shares in the lands. In the instant appeal against the High Court's order, the appellants submitted that the respondents' reasons for applying for the order for sale did not satisfy the pre-conditions necessary to give the High Court the jurisdiction to make the order under O 31 r 1 of the Rules of Court 2012 ('the ROC'); in other words, there did not exist 'a cause or matter relating to the lands' and that it was 'necessary or expedient for the purposes of the cause or matter' for an order for sale of the lands to be made. Absent such cause or matter, the appellants argued that the order for sale could not stand. The appellants submitted that in coming to its decision, the High Court had relied upon case-law which had been over-ruled by two decisions of the Court of Appeal regarding the conditions that must be satisfied to enable O 31 r 1 of the ROC to be invoked, namely, the decisions in *Koh Heng Jin Holdings Sdn Bhd v Phuah Beng Chooi & Anor* [2016] MLJU 1718 ('Koh Heng Jin') and *Chiu Kwan Yiu*

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v Thien Lip Ha @ Annie Chiu Sai Chang [2015] MLJU 2157 ('Chiu Kwan Yiu'). Although bound by those decisions under the principle of stare decisis, the High Court had failed to follow them.

Held, unanimously allowing the appeal and setting aside the order for sale:

(1) The High Court could only order a sale of any immovable property pursuant to O 31 r 1of the ROC when there was a cause or matter relating to any immovable property and it appeared necessary or expedient for the purposes of that cause or matter that the immovable property be sold. Those elements had to be fulfilled before O 31 r 1 of the ROC could be invoked. Order 31 r 1 did not and could not override the appellants' sacrosanct right to property under art 13 of the Federal Constitution (see para 29).

(2) In order to exercise the power under O 31 r 1 of the ROC, the High Court first had to have the jurisdiction to exercise its powers. Order 31 r 1 was not a blanket provision that empowered or gave jurisdiction to the High Court to order the sale of any immovable property, particularly against the wishes of a proprietor of the land, in the absence of a cause or matter (see para 30).

(3) In the present case, when the application for the order for sale of the lands was made, no cause or matter between the contending parties in relation to the lands existed. Hence, there was simply no basis or jurisdiction for the High Court to order a sale of the lands under O 31 r 1 of the ROC. The respondents' reasons for wanting to sell the lands was because of the age of the proprietors and executors of the respective estates and because the subdivision of the lands was a difficult and expensive process and also because the first appellant refused to sell his share in the lands. These were not grounds to invoke O 31 r 1 of the ROC. As expressed by the Court of Appeal in *Chiu Kwan Yiu*, there had to be an independent cause of action by the respondents before they could ask the court to invoke the relief of judicial sale. The respondents had also failed to show that it was necessary and expedient to order a sale of the lands. Absent a cause or matter, the mere fact that there was a dispute between the parties as to whether the lands ought to be sold or not was insufficient to enable O 31 r 1 to be invoked (see paras 31, 33–34, 36 & 38–39).

(4) The decisions of the Court of Appeal in *Koh Heng Jin* and *Chiu Kwan Yiu* were binding on the High Court, yet the High Court elected not to follow those decisions and gave no reasons for doing so (see paras 41 & 45).

(5) The High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application made under O 31 r 1 of the ROC (see para 53).

[Bahasa Malaysia summary

Perayu-perayu merayu terhadap perintah Mahkamah Tinggi yang memerintahkan 13 lot tanah ('tanah tersebut') yang ditanam dengan pokok kelapa sawit dan getah dijual melalui perjanjian persendirian atau secara lelongan dan hasil jualan tersebut diagihkan di kalangan perayu dan responden mengikut bahagian dalam tanah masing-masing. Permohonan untuk penjualan tanah tersebut dibuat oleh lima responden pertama atas alasan ada di antara responden yang berumur lanjut dan/atau tidak sihat (responden pertama, kedua dan kelima masing-masing berumur 85 tahun, 80 dan 89 tahun), bahawa ia adalah sukar dan mahal untuk membahagikan tanah-tanah tersebut dan bahawa perayu-perayu tidak mahu menjual bahagian mereka dalam tanah-tanah tersebut. Dalam rayuan semasa terhadap perintah Mahkamah Tinggi, perayu-perayu berhujah bahawa alasan responden untuk memohon perintah jualan tidak memenuhi pra-syarat yang diperlukan untuk memberi Mahkamah Tinggi bidang kuasa untuk membuat perintah di bawah A 31 k 1 of Kaedah-Kaedah Mahkamah 2012 ('KKM'); dalam erti kata lain, tidak wujud 'sebab atau perkara yang berkaitan dengan tanah' dan bahawa ia adalah 'perlu atau suai manfaat untuk tujuan kausa atau perkara' untuk perintah penjualan tanah yang akan dibuat. Tanpa sebab atau perkara tersebut, perayu-perayu berhujah bahawa perintah penjualan tidak boleh dijalankan. Perayu-perayu berhujah bahawa dalam membuat keputusannya, Mahkamah Tinggi telah bergantung kepada kes undang-undang yang telah diakas oleh dua keputusan Mahkamah Rayuan berhubung syarat-syarat yang mesti dipenuhi untuk membolehkan A 31 k 1 KKM diguna pakai, iaitu, keputusan dalam *Koh Heng Jin Holdings Sdn Bhd v Phuah Beng Chooi & Anor* [2016] MLJU 1718 ('Koh Heng Jin') dan *Chiu Kwan Yiu v Thien Lip Ha @ Annie Chiu Sai Chang* [2015] MLJU 2157 (*Chiu Kwan Yiu*'). Walaupun terikat dengan keputusan tersebut di bawah prinsip stare decisis, Mahkamah Tinggi telah gagal untuk mengikutinya.

Diputuskan, sebulat suara membenarkan rayuan dan mengetepikan perintah untuk jualan:

(1) Mahkamah Tinggi hanya boleh memerintahkan penjualan mana-mana harta tak alih menurut A 31 k 1 KKM' apabila terdapat kausa atau perkara yang berkaitan dengan mana-mana harta tak alih dan didapati perlu atau suai manfaat bagi maksud kausa atau perkara tersebut bagi harta tak alih untuk dijual. Elemen tersebut perlu dipenuhi sebelum A 31 k 1 KKM boleh digunakan. Aturan 31 k 1 tidak harus dan tidak boleh mengatasi hak mutlak perayu terhadap hartanah di bawah perkara 13 Perlembagaan Persekutuan (lihat perenggan 29).

(2) Untuk melaksanakan kuasa di bawah A 31 k 1 KKM, Mahkamah Tinggi terlebih dahulu perlu mempunyai bidang kuasa untuk menjalankan kuasanya. Aturan 31 k 1 bukanlah satu peruntukan menyeluruh yang

memberi kuasa atau memberikan bidang kuasa kepada Mahkamah Tinggi untuk memerintahkan penjualan mana-mana harta tak alih, terutamanya terhadap kehendak tuan punya tanah, jika tiada kausa atau perkara (lihat perenggan 30).

(3) Dalam kes semasa, apabila permohonan untuk perintah penjualan tanah tersebut dibuat, tiada sebab atau perkara antara pihak yang dalam pertikaian berhubung dengan tanah tersebut wujud. Oleh itu, tiada asas atau bidang kuasa untuk Mahkamah Tinggi memerintahkan penjualan tanah di bawah A 31 k 1 KKM. Alasan responden mahu menjual tanah adalah kerana umur pemilik dan wasi harta pusaka masing-masing dan kerana pecah bahagi tanah adalah proses yang sukar dan mahal dan juga kerana perayu pertama enggan menjual bahagiannya dalam tanah. Ini bukan alasan untuk menggunakan A 31 k 1 KKM. Seperti yang dinyatakan oleh Mahkamah Rayuan dalam *Chiu Kwan Yiu*, perlu ada kausa tindakan bebas oleh responden sebelum mereka boleh meminta mahkamah memohon pelepasan penjualan kehakiman. Responden juga telah gagal untuk menunjukkan bahawa adalah perlu dan suai manfaat untuk memerintahkan penjualan tanah. Tiada sebab atau perkara, fakta bahawa terdapat pertikaian antara pihak sama ada tanah tersebut patut dijual atau tidak adalah tidak mencukupi untuk membolehkan A 31 k 1 digunakan (lihat perenggan 31, 33–34, 36 & 38–39).

(4) Keputusan Mahkamah Rayuan dalam *Koh Heng Jin* dan *Chiu Kwan Yiu* mengikat Mahkamah Tinggi, namun Mahkamah Tinggi memilih untuk tidak mengikut keputusan tersebut dan tidak memberikan alasan untuk berbuat demikian (lihat perenggan 41 & 45).

(5) Mahkamah Tinggi gagal menghayati undang-undang, menggunakan undang-undang secara salah dan gagal menghayati prinsip yang mengawal permohonan yang dibuat di bawah A 31 k 1 KKM (lihat perenggan 53).]

Cases referred to

Chitra Claire Pillai a/p Joseph Sandra v Noel John Bernatt [2015] MLJU 663, HC (refd)

Chiu Kwan Yiu v Thien Lip Ha @ Annie Chiu Sai Chang [2015] MLJU 2157, CA (refd)

KK Kumaran v TS Sambanthamurthi [1996] 3 MLJ 309, HC (refd)

Koh Heng Jin Holdings Sdn Bhd v Phuah Beng Chooi & Anor [2016] MLJU 1718; [2016] 3 CLJ 837, CA (refd)

Leap Modulation Sdn Bhd v PCP Construction Sdn Bhd and another appeal [2019] 1 MLJ 334, CA (refd)

Peria Periasamy s/o Sinnappan & Anor v PP [1996] 2 MLJ 557, CA (refd)

Rubyna Kaur Surinder Singh v Jasbir Singh Harbajan Singh [2003] 6 MLJ 753, HC (refd)

Tan Kok Chiang v Tan Yaw Ti & Anor [2009] MLJU 606, HC (refd)
Yong Hin Seong & Anor v Yong Teik Seong [2003] 6 MLJ 38, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 25, Schedule, para 3
Federal Constitution art 13
Probate and Administration Act 1959 s 60
Rules of Court 2012 O 31 r 1

Appeal from: Originating Summons No NA-24NCVC-238–08 of 2018 (High Court, Seremban)

Rishwant Singh (with Syukran Syafiq) (Cecil Abraham & Partners) for the appellants.
Manian a/l Raju (with Raswanti a/p Nagaindren) (Manian Raju & Assoc) for the respondents.

Kamaludin Md Said JCA:

INTRODUCTION

[1] This is the appellants' appeal against the order of the High Court dated 7 September 2020 which, inter alia, ordered that all the 13 lots of lands (Lots 1811–1835) of Mukim Port Dickson to be sold by way of private sales or by auction at the market price and the proceed of the sales be distributed amongst the respondents and the appellants according to their registered shares in the said lands. The High Court further ordered that the private caveat dated 2 July 2014 on the said lands be removed and set aside.

[2] The appellants are the third and fourth defendants and the respondents are the first to fifth plaintiffs in the originating summons filed by the plaintiffs at the High Court. In the originating summons, the plaintiffs sought a sale of all the lands owned by all the plaintiffs and the third defendant.

[3] The appellants and the respondents have filed their written submissions and also made oral submissions before this court.

[4] In this appeal the appellants contended that the High Court order dated 7 September 2020 which allowed the plaintiffs' originating summons was, erroneous and clearly wrong in law based on the grounds submitted before us.

[5] The respondents contended that the High Court's decision is manifestly fair, just, rational and according to law after taking into consideration the factual matrix of this case.

[6] We have considered the submissions from the appellants and the respondents both oral and written and having also read the grounds of judgment of the learned High Court judge and the records of appeals, we are satisfied that there is merit in the appellants' appeal. It is our finding that the order dated 7 September 2020 is erroneous and wrong in law.

[7] It is our unanimous decision that the appellants' appeal is allowed and the order dated 7 September 2020 is set aside with no order as to costs.

BACKGROUND FACTS

[8] The appellants are the legal and/or beneficial owners of a 1/4 share in the 13 plots of land ('the lands'). All the lands are joining together planted with oil palm and rubber trees.

[9] The respondents filed an originating summons in encl 1 for an order for sale of the lands by private sales of by auction at a market price. The proceeds of the sales shall be distributed amongst the respondents and the appellants according to their shares and on behalf of the estates of the deceased proprietors respectively and to the first respondent.

[10] The appellants objected to the originating summons for sale of the lands and removal of the caveat on the said lands on grounds that the application for an order for sale does not fall or comply with O 31 r 1 of the Rule of Court 2012 ('the ROC') and the order for sale of the appellants' shares in the land amount to deprivation of their property under art 13 of the Federal Constitution. Further, O 31 r 1 of the ROC does not allow the court to order the sale of the lands as required by the respondents even on reason that the first respondents is sick and 85 years old.

THE HIGH COURT DECISION

[11] The High Court agreed with the respondents on account that the first respondent is the only living proprietor of the lands whereas the other respondents are the representative of the estates of the deceased proprietors. The court also considered that the majority shares ie 5/8 shares in the lands belongs to the respondents. The appellants' share is only 3/8.

[12] The court also considered the age of the first respondent is 85 years old, the second respondent is 80 years old and the fifth respondent is 89 years old. The first respondent acquired the land in the seventies and became the administrator of the deceased estates since 2007. The other respondents became the administrators of the deceased estates in 2002, 2010 and 2014 respectively.

[13] The court also considered the subdivision of the lands according to their respective shares is very expensive and costly. A

[14] The High Court disagreed with the appellants that the court has no power under O 31 r 1 of the ROC to order the sale of the property. B

[15] The High Court was of the view that it has the jurisdiction and power to order the sale of the said lands relying on the High Court case of *Tan Kok Chiang v Tan Yaw Ti & Anor* [2009] MLJU 606 which says that the High Court has the power to order the sale of the property under O 31 r 1 of the ROC. In that case, Rhodzariah bt Bujang JC (as she then was) followed the decision by James Foong J in *KK Kumaran v TS Sambanthamurthi* [1996] 3 MLJ 309 which held that O 31 r 1 of the ROC is the relevant rule to exercise the power under para 3 to the Schedule of the CJA. She did not follow the decision by Suriyadi J in *Rubyna Kaur Surinder Singh v Jasbir Singh Harbajan Singh* [2003] 6 MLJ 753. C D

[16] The High Court in the present case also followed the decision of Abdul Malik J in *Yong Hing Seong & Anor v Yong Teik Seong* [2003] 6 MLJ 38 where His Lordship held that the court has the power to order the sale based on O 31 r 1 of the ROC and not on any provision of the National Land Code. The High Court also referred to another High Court case of *Chitra Claire Pillai a/p Joseph Sandra v Noel John Bernatt* [2015] MLJU 663 which had ordered the sale of the property to resolve the dispute between the parties. E F

ORDER OF THE HIGH COURT

[17] The High Court allowed part of the respondents' originating summons (encl 1) by giving the appellants three options with regards to their shares in the lands as follows: G

(i) Penjualan kesemua harta di 13 lot berkenaan dan pihak-pihak Defendan diberi keutamaan membeli semula lot yang sama nilai dengan bahagian mereka dan segala kos ditanggung oleh puhak-pihak di dalam guaman ini secara sama rata jika nilai tanah berkurangan pihak Defendan 3 dan Defendan 4 dibayar dengan wang hasil jualan; atau H

(ii) Sekiranya nilaian tanah 1/4 milik Defendan 3 & 4 dapat dipersetujui semua pihak diketepikan tanpa jualan oleh itu bahagian Defendan 3 & 4 diketepikan dari mana-mana 13 lot tersebut dan jika berkurangan ditambah dengan wang hasil jualan lot-lot lain diberikan kepada Defendan 3 & 4 dan kos pindah milik kepada Defendan 3 & 4 ditanggung oleh hasil jualan lot-lot ini; atau I

(iii) Sekiranya Defendan 3 & 4 gagal memilih antara dua pilihan di atas pihak Defendan 3 & 4 hendaklah diberikan wang hasil jualan 13 lot berkenaan

A mengikut bahagian mereka 1/4 tersebut secara sama rata dengan pihak-pihak yang lain seperti mana Lamp. 1 di perenggan (a) dan (b).

(iv) Perintah seperti permohonan untuk perenggan (c) (i) dan (ii);

(v) Kaveat dibatalkan [perenggan (d)]

B (vi) perintah seperti mana permohonan sekiranya Defendan 3 & 4 enggan memberi kerjasama opsyen 3 dijalankan secara sebelah pihak dengan mana para (c) (ii) diguna pakai.

(vii) Masing-masing pihak menanggung kos guaman ini [para (g)].

C GROUNDS OF APPEAL

[18] The appellants' appeal is premised on the following grounds:

(a) the order is incomprehensible and lacks clarity. Consequently, it is
D impossible for parties to give effect to the order;

(b) the High Court formulated its own relief which was not prayed for by any party. Parties, the appellants especially, were, accordingly, not afforded the opportunity to address the High Court on the relief formulated. This
E is a breach of natural justice point;

(c) the High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application under O 31 r 1 of ROC;

F (d) the High Court failed to follow two decisions of the Court of Appeal in construing O 31 r 1 of ROC. The High Court was bound by the concept of stare decisis to follow the decisions of the Court of Appeal in construing O 31 r 1 of the ROC; and

(e) the High Court fell into error in ordering the removal of the caveat. In
G this regard, the second appellant has a caveatable interest in the lands premised on the declaration of trust. To date the respondents have failed to provide any cogent reasons for the removal of the caveat.

ANALYSIS/DECISION

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[19] At the outset we find the strongest point raised by the appellants in this appeal is with regard to the point of law on power or jurisdiction of the High Court to order for sale of the said lands or property under O 31 r 1 of the ROC.

I **[20]** In respect of the issues of the order of court lacks clarity and the manner the order was formulated by the High Court judge and including the order to remove the caveat on the said lands, in our view, the issues are secondary for reason that if the court agrees with the appellants that the High Court was wrong or has no power to grant the order for sale of the property in the

circumstances of this case, the order is liable to be set aside and the caveat is restored. If it is otherwise, the order remains valid subject to parties applying to the High Court for further clarification of the said order.

[21] The crux of the issue is whether the respondents' sole application for a sale of all the lands can be granted by the High Court. It is not disputed that the prayers in the plaintiffs' originating summons is for sale of the said lands on reasons of geographic location and its large area and the respondents as the proprietors and executors' estates of the deceased proprietors are very old.

[22] Thus, the argument is centred on the powers of court in O 31 r 1 of the ROC, para 3 of the Schedule, ss 3 and 25 of the CJA and the authorities submitted by the appellants.

[23] Order 31 r 1 of the ROC provides as follows:

> Where in any cause or matter relating to any immovable property it appears necessary or expedient for purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property to be sold, and any party bound by the order and in possession of that property or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other persons as the Court may direct.

[24] The power in O 31 r 1 of the ROC is conferred by s 25 of the CJA read together with para 3 of the Schedule (see *Yong Hin Seong & Anor v Yong Teik Seong* [2003] 6 MLJ 38).

[25] Paragraph 3 of the Schedule of the CJA reads as follows:

> Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all the necessary and consequential directions.

[26] The phrase 'appears necessary or expedient' means 'in the context of the cause or matter'. It must appear vital that the property be sold for the purpose of the cause or matter and not for the needs of the parties to the cause or matter (see: *Rubyna Kaur a/p Surinder Singh v Jasbir Singh a/l Harbajan Singh*, at pp 761–762 which was subsequently affirmed by the Court of Appeal in *Koh Heng Jin Holdings Sdn Bhd v Phuah Beng Chooi & Anor* [2016] MLJU 1718; [2016] 3 CLJ 837).

[27] The terms 'cause' and 'matter' are defined in s 3 of the CJA as follows:

> 'cause' includes any action, suit or other original proceeding between a plaintiff and

A defendant, and any criminal proceeding; 'matter' includes every proceeding in court not in a cause.

See also: *Chiu Kwan Yiu v Thien Lip Ha @ Annie Chiu Sai Chang* [2015] MLJU 2157.

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[28] The High Court in *Rubyna Kaur a/p Surinder Singh v Jasbir Singh a/l Harbajan Singh* held that the application of O 31 r 1 of ROC in the absence of an existing cause or matter is in contravention of the law or rules of court:

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I now touch on question (ii). As O 31 speaks succinctly of the existence of the precondition of cause or matter, and unless that precondition is established first, any application would face certain rejection at the outset. What then is cause or matter in the context of this order? Under s 3 of the CJA, the interpretation of cause includes 'any action, suit or other original proceeding between a plaintiff and

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defendant, and any criminal proceeding, whilst matter would include 'every proceeding in court not in a cause'. *Black's Law Dictionary* defines cause as 'a suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice'. As regards 'matter' Black defines it as 'substantial facts forming basis of claim or defence; facts material to issue; substance as distinguished from

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form; transaction, event, occurrence, subject-matter of controversy'. Despite the wide scope of the words cause and matter or because of it, as defined by the CJA and *Black* (as the terminology includes is adverted to), *I was satisfied that these two words must relate to some existing court proceedings pertaining to the impugned property within the context of O 31. Without mincing words, prima facie if there are no court*

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proceedings, not necessarily confined to actions filed by the contending parties, then justification of necessity or expediency of that intended sale does not exist. From the evidence, and also admitted by both parties, I had managed to gather that there was no cause or matter in relation to the impugned property having been filed in court in whatever form, eg a separation or even divorce proceedings by the contending parties or any litigation taken up even by an interested third party anywhere in

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Malaysia. On that score, bearing in mind that the additional powers 'shall be exercised in accordance with any written law or rules of court', and as the applicant had failed miserably as regards a pertinent requirement, she already at the opening stage was hard pressed to convince me. *To avoid any uncertainty, I must unhesitatingly state that as I had found no cause or matter at the stage of the application, to grant the*

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application would mean exercising the powers of sale in contravention of any written law or rules of court relating thereto.

As regards the third question (iii), even if there was a cause or matter, the applicant had failed to prove that it appeared necessary or expedient to order the sale. The requirement of appears necessary or expedient, which must be read in the context of

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the cause or matter, must surely mean that in the context of that scenario, it must appear vital or something which is required that the property be sold ... I was and am still of the view that whether it appears necessary or expedient, must be considered from every aspect, and not merely tailored to the solitary opinion and needs of the applicant. In fact, *O 31 in clear terms legislated that the property be sold 'for the purpose of the cause and matter' and not the applicant or respondent's needs.* To wind up this

poser, not only a vacuum existed as regards the existence of a cause or matter, but even the grounds supplied by the applicant too were weak, speculative and tainted'. A

[29] From the above, it is clear that the High Court can only order a sale of any immovable property pursuant to O 31 r 1 of the ROC when there is a cause or matter relating to any immovable property and it appears necessary or expedient for the purposes of the cause or matter that the immovable property be sold. These elements must be fulfilled before O 31 r 1 of the ROC can be invoked. We agree with the appellants that O 31 r 1 of the ROC does not and cannot override the appellants' sacrosanct right to property in art 13 of the Federal Constitution. B C

[30] In order to exercise its power under O 31 r 1 of the ROC, the High Court must first have the jurisdiction to exercise its powers. O 31 r 1 of the ROC is not a blanket provision to empower the High Court to order the sale of any immovable property particularly against the wishes of a proprietor of the land. In the absence of a cause or matter, O 31 r 1 of the ROC does not empower or give jurisdiction to the High Court to order the sale of land. D

[31] On the facts of the present case, as alluded to earlier that the respondents reasons to sell the un-subdivided land is because of the age of the proprietors and executors of the estates and the subdivision of the lands is a difficult and expensive process. No other reasons or justification for the sale of the appellants' land was given by the respondents. E F

[32] The appellants have submitted that these are not valid reasons for the appellants to part with their interest in the land. And, more importantly, the High Court has no jurisdiction to order the sale of the appellants' interest in the land for such reasons. Therefore, the respondents' reliance on O 31 r 1 of the ROC was misconceived. G

[33] We agree with the appellants that the question before this court is simple: is there any cause or matter relating to the lands? We find there is no cause or matter at the stage of the application. In our view the High Court fell into error in not addressing this question. In other words, there was no cause or matter in existence between the contending parties. Consequently, there is simply no basis or jurisdiction for the High Court to order a sale of the lands under O 31 r 1 of the ROC. H I

[34] Further, as submitted by the appellants, the evidence adduced to justify the sale was tainted, hence failing to satisfy the factor of expediency and necessity; the respondents evidentially was still residing in that impugned immoveable property and the loan was being serviced as per the agreement by

A the respondent, hence rejecting the probability that the loan would be recalled and the property foreclosed.

[35] The Court of Appeal in *Koh Heng Jin Holdings Sdn Bhd v Phuah Beng Chooi & Anor* affirmed *Rubyna Kaur*. Koh Heng Jin concerned an application B by the plaintiff to compel the defendants to sell their 1/3 share of the property to the plaintiff which is not unlike the facts of the present appeal. The Court of Appeal held that the plaintiff's real claim was in relation to rent and thus was not a 'cause or matter in relation to land':

C [31] We agree that the phrase 'in any cause or matter relating to land' in the said para 3 confers power on the court to order the land or any part thereof to be sold, in actions other than for partition of land. *However, in our view the phrase 'and in any cause or matter relating to land' in the said para. 3 and 'in any cause or matter relating to immoveable property' in O 31 r 1 of the RC is not applicable in the present case as the said OS is not a cause or matter pertaining to property within the context of O 31 r 1* (per D *Suriyadi J in Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* [2003] 6 MLJ 753; [2004] 1 CLJ 347).

[32] The said OS was filed pursuant to the refusal of the said Koh Heng Huat to accept the plaintiff's proposal for the creation of a tenancy and the imposition of rental in the sum of the RM30,000.00 and the subsequent non-response of the E defendants to the aforesaid proposal.

[33] Although the plaintiff's prayer in the said OS is for an order that the defendants' 1/3 undivided share in the said property be sold and transferred to the plaintiff under s 25 of the CJA read together with the said para 3 and O 31 r 1 of the RC, it can be seen from the exchange of letters between the parties and the said Koh F Heng Huat that the real issue here is the issue of rental.

[36] It is important to note that a dispute between the parties as to whether the lands ought to be sold does not come within the ambit of O 31 r 1 of the G ROC. If there was any dispute on this point, it has been laid to rest by the Court of Appeal in *Chiu Kwan Yiu v Thien Lip Ha @ Annie Chiu Sai Chang* [2015] MLJU 2157. See paras [14]–[18]:

[14] This brings us to the second part of the para 3 of the Schedule which refers to 'cause or matter relating to land'. During the hearing we asked counsel for the H respondents what 'cause or matter relating to land' did the respondents premise their application on? Learned counsel conceded there was no such cause or matter *except to say that there is a dispute between the parties as to whether the land should be sold.* With respect that is not the law as we see it.

[15] The words 'cause' and 'matter' are defined in s 3 of the Courts of Judicature Act I 1964. The word 'cause' is defined to include 'any action, suit or other original proceeding between the plaintiff and defendant, any criminal proceeding.' The word 'matter' is defined as including 'every proceeding in court not in cause'.

[16] We are satisfied that the manner in para 3 of the Schedule to the Courts of Judicature Act 1964 is structured and taking into consideration of the definition of

the aforesaid words, *there must be an independent cause of action by the respondents before they can ask the Court to invoke the re/let official sale*. In the context of this case and from the affidavit-in-support of their application, the respondents must either sue for payment of rental or possession of the land premised on some sort of agreement or understanding between the joint owners of the land as to the rights and obligations of the same.

[17] From the originating summons, the relief sought for was for the following order:

> The plaintiff be at liberty to sell the single storey warehouse held under CLO15304220, Lot 15805 known as Lot 17, Jln Tongkuzu, Kota Kinabalu (the said Property) by public auction and that the plaintiff be and the defence at liberty to bid at the public auction.

With respect this is not a 'cause or matter relating to land' as envisaged in paragraph 3 of the Schedule to the Courts of Judicature Act 1964.

[18] Prima facie, the respondents as joint owners of the land of course are entitled to some rights for rental and possession and they can demand for the same. *Only when the appellant refuses to comply the aforesaid demands resulting in the respondents taking out legal proceedings to enforce the same will exist a 'cause or matter relating to land'. It is only in such circumstance that the courts are clothed with the jurisdiction to order a judicial sale and only when it is 'necessary and expedient' in the circumstances.*'

[37] In *Chiu Kwan Yiu* the only relief sought in the originating summons was an order for the sale of the land. The Court of Appeal held that this was not a cause or matter relating to the land. The application in *Chiu Kwan Yiu* was dismissed by the Court of Appeal as there was no cause or matter relating to the immovable property.

[38] It is reiterated that in this case, the only relief sought by the respondents is an order for a sale of the lands. The respondents are seeking an order for the lands to be sold on the grounds of old age of the first respondent; and that the first appellant refuses to sell their share in the lands. In our considered view, these are not grounds to invoke O 31 r 1 of the ROC. The Court of Appeal in *Chiu Kwan Yiu* expressed succinctly that 'there must be an independent cause of action by the respondents before they can ask the court to invoke the relief of judicial sale.'

[39] The respondents have also failed to demonstrate that it is necessary or expedient in the present circumstances to order a sale of the lands. In *Rubyna Kaur* the High Court held:

> The requirement of appears necessary or expedient, which must be read in the context of the cause or matter, must surely mean that in the context of that scenario, *it must appear vital or something which is required that the property be sold* (see *Services Ltd v Wong Liang Toon & Ors* [1959] 1 MLJ 17, *Re Tan Tye Decd, Estate & Trust*

Agencies (1927) Ltd v Tan Lian Chye & Ors [1957] MLJ 114; *Si Rusa Inn Sdn Bhd & Ors v The Collector of Land Revenue Port Dickson & Ors* [1987] 1 MLJ 147). I was and am still of the view that *whether it appears necessary or expedient, must be considered from every aspect, and not merely tailored to the solitary opinion and needs of the applicant. In fact, O 31 in clear terms legislated that the property be sold 'for the purpose of the cause and matter' and not the applicant or respondent's needs.*

[40] The respondents' application for an order to sell the lands must be necessary and expedient for the purposes of the cause or matter. We agree with the appellants that on the present facts there is no other cause or matter in any court in respect of the lands. This is not in dispute. Absent a cause or matter, it accordingly follows that the respondents are unable to demonstrate that it is necessary and expedient for the High Court to order a sale of the lands.

[41] We agree with the appellants that the decisions of the Court of Appeal in *Koh Heng Jin* and *Chiu Kwan Yiu* was binding on the High Court yet the High Court elected not to follow the said decisions. The High Court, in applying O 31 r 1 of the ROC, relied solely on the decision in *Tan Kok Chiang v Tan Yaw Ti and Anor*. In *Tan Kok Chiang*, Rhodzariah bt Bujang JC (as she then was) was tasked with deciding between two conflicting High Court decisions in relation to O 31 r 1 of the ROC:

> In arriving at this decision, I respectfully declined to follow the decision of Suriyadi Halim Omar J's decision (as His Lordship then was) in *Rubyna Kaur Surinder Singh v Jasbir Singh Harbajan Singh* [2004] 1 CLJ 347 cited by Ms Stephanie Chin and find support in the decision of Abdul Malik J (as His Lordship then was) in *Yong Hin Seong & Anor v Yong Teik Seong* [2003] 6 MLJ 38 the facts of which case is not unlike the present one before me. In that case 2 brothers also could not agree on the amount of rentals which one must to pay to the other. Abdul Malik J decided that an order for sale of the land should be made to resolve the impasse between the parties. His Lordship held that he has the power to order the *sale based on the provisions of law I quoted earlier and not on any provision of the National Land Code.*
>
> With respect to the decision in *Rubyna*'s case I do not think there is a necessity for there to be an existing court proceeding other than the action filed by the plaintiff in order for the court to exercise the power to order the sale.'

[42] At this stage, the following should be noted:

(a) *Tan Kok Chiang* was decided by the High Court on 30 July 2009; and

(b) *Koh Heng Jin* (which affirmed *Rubyna Kaur*) was decided by the Court of Appeal on 13 January 2016 whilst *Chiu Kwan Yiu* was decided by the Court of Appeal on 26 June 2015.

[43] From the above, it is readily apparent that the High Court in *Tan Kok Chiang* did not have the benefit of the two separate Court of Appeal decisions

relating to the applicability of O 31 r 1 of the ROC. It was therefore, open to the High Court to adopt either one of the two conflicting views. In the present Appeal, the High Court did not have same option under the doctrine of stare decisis. At the time the originating summons was filed in 2018, *Tan Kok Chiang* was no longer good law and the principle set out therein was already overruled by the Court of Appeal in *Koh Heng Jin* and *Chiu Kwan Yiu*.

[44] We agree with the appellants that a reading of the grounds of judgment indicates that the High Court was aware of the fact that the decision *Rubyna Kaur* was affirmed by the Court of Appeal in *Kok Heng Jin*:

> [3] Defendan kedua tidak memfailkan sebarang afidavit jawapan. Manakala defendan 3 dan defendan 4 (def 3 and 4] membantah permohonan plaintif-plaintif (Plf-Plf) untuk menjual 13 lot hartanah dan membatalkan kaveat persendirian ini atas alasan bahawa A 31 k 1 KKM 2012 membawa maksud 'appears necessary or expedient' adalah dalam konteks 'cause or matter relating to any immovable property' atas keperluan hartanah tersebut dijual bukannya untuk keperluan pihak-pihak dengan merujuk kepada kes *Rubyna Kau v Jasbir Singh* [2003] 6 MLJ 753 dan dikatakan mengikat Mahkamah ini dengan keputusan Mahkamah Rayuan yang bersetuju dengan kes Rubyna Kaur di dalam kes *Koh Heng Jin Holdings S/B v Phuah Beng Chooi* [2016] MLJU 1718; [2016] 3 CLJ 837.

[45] We also agree with the appellants that the High Court elected not to follow the two decisions of the Court of Appeal which were binding on the High Court. No reasons were given by the High Court for departing from the two decisions of the Court of Appeal.

[46] In *Peria Periasamy s/o Sinnappan & Anor v Public Prosecutor* [1996] 2 MLJ 557 the Court of Appeal held that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of stare decisis. We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein (see also *Leap Modulation Sdn Bhd v PCP Construction Sdn Bhd and another appeal* [2019] 1 MLJ 334).

[47] We noted that the High Court had also referred to the decisions in *Chitra Claire Pillai a/p Joseph Sandra v Noel John Bernatt* where an application for an order for sale was allowed in *Chitra Claire*. The appellants submitted that this authority may be distinguished. We agree with the appellants.

[48] In *Chitra Claire Pillai a/p Joseph Sandra v Noel John Bernatt*, the High Court accepted the decision of the Court of Appeal in *Chiu Kwan Yiu v Thien*

Lip Ha @ Annie Chiu Sai Chang that there must be an independent cause of action before O 31 r 1 of the ROC can be invoked. On the facts of Chitra, the parties therein were involved in a divorce proceeding in a UK Court. The property therein was a subject of their marriage assets; In those circumstances, the High Court held that the divorce proceedings in the UK satisfied the requirement of a pre-existing 'cause or matter relating to the land' (see para [40] of the report); The High Court did not dispense with the requirement of a pre-existing cause or matter relating to the land. On the contrary, the High Court found that there was in existence a cause or matter relating to the land, thereby fulfilling the requirements of O 31 r 1 of the ROC 2012; Thereafter, the High Court considered whether it was necessary and expedient to order the sale of the land.

[49] From the above, it is readily apparent that the High Court in *Chitra* did not disregard the express requirements of O 31 r 1 of the ROC.

[50] We agree with the appellants that in the present case, there is no cause or matter pending in any court in respect of the lands. This is fortified by the fact that the originating summons and the affidavit in support do not refer to any pending cause or matter in any court. The pre-requisite of the existence of a cause or matter has not been fulfilled. Consequently, there is no basis for the respondents to rely upon O 31 r 1 of the ROC.

[51] We have considered the respondents' argument that their reliance on s 60 of the Probate and Administration Act 1959 ('the Act') evidences a cause or matter relating to the lands is misconceived. We agree with the appellants that s 60 of the Act merely relates to the power of a personal representative to dispose of property of the deceased. It is not, in itself, a cause or matter within the meaning of s 3 of the JCA. Consequently, O 31 r 1 of the ROC is not applicable on the present facts. The High Court, fell in to error in ordering the sale of the lands.

CONCLUSIONS

[52] For all intent and purpose, it appears that the respondents only concern is the apparent impracticality of subdividing the lands. Put another word, the plaintiffs have come to the High Court simply because it is convenient to do so when the appellants do not wish to sell their shares in the lands. On the facts, we find there was no cause or matter pending in any court in respect of the lands.

[53] For the above reasons, we are satisfied that the High Court, fell into error in his decision. The High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application

pursuant to O 31 r 1 of the ROC.

[54] Wherefore, the appeal is allowed with no order as to costs.

Appeal allowed and order for sale set aside.

Reported by Ashok Kumar